DIVISIONAL FOREST OFFICE SOUTHERN CIRCLE WORKING PLANS PARTY II

DIVISIONAL FOREST OFFICE Inwd. Regr. No. 112 Date 2/12/32 WORKING PLANS PARTY II

KHOTS AND KHOTI VILLAGES.

I.—General Provisions relating to Khots and their Inferior Holders.

1. It is established beyond question—

(1) that Government has a right on occasion of a general survey to review and alter revenue payable by the Khots;

(2) that Khots have the right of settling with Government, in the gross, and of deriving a profit by sub-letting the land to others;

(3) that the rayat has a right to protection from over-exaction on the part of the Khots.

(G. R. No. 1832, dated 18th May 1860.)*

2. Under the survey lease, a Khot is liable for the full assessment of his village, and is, therefore, bound to pay the assessment due on a relinquished dhárekari's holding, though he cannot be compelled to cultivate the land so relinquished if he declines to do so. (G. R. No. 4265, dated 6th September 1870.)

3. Occupied wáwa or boundary dispute lands may be regarded as dhára lands held by the cultivators in possession without payment of any premium for the right of occupancy, unless they have been clearly held on terms of mere annual tenancy pending settlement of the boundary disputes. In the latter case only the cultivators should be required to pay five years' assessment for the occupancy right conceded to them. The usual percentage should be paid to the Khot of the village in which the lands have been included.

With regard to unoccupied lands, they should be assessed, having regard to their value as jungle, and then handed over unconditionally to the Khots.

(G. R. No. 2514, dated 19th April 1877.)

4. By the term "dhára lands" in the above order nothing was meant beyond survey occupancy. It appears that at the time of the survey settlement the right of occupancy of these wáwa lands was, as a rule, granted to the persons found actually in culti-

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* "The rights and privileges of Khots in Kolába are governed by Sections 37 and 38 of Bombay Act I of 1865. These sections were based on the Government Resolution No. 1832 of 18th May 1860. At the second reading of the Survey and Settlement Bill the late Sir Barrow Ellis said :—

'If this Resolution were published with the report of the present proceedings, there would be no ground for saying that sufficient information had not been given to the public in regard to the nature of the settlements in khoti villages which it was proposed to legalise.'

"(*Vide* page 170 of the Survey and Settlement Manual.)

"This Resolution may thus be said to be the charter of both the Khots and their rayats in the khoti villages in Kolába." (*Extract from memorandum from the Commissioner, S. D., No. 4426, dated 5th October 1893*; *vide* page 146 of Government Selection No. CCXCI, New Series.)

vation of the lands, and the lands were entered in the names of persons so in possession. No change should be made as regards the entry of this wáwa lands and no premium should be charged for the right of their occupancy except in cases where the tenancy can be shown to be yearly and not of a permanent nature. (G. R. No. 1854, dated 29th February 1884.)

5. The following opinion (No. 268, dated 28th February 1882) of the Remembrancer of Legal Affairs was concurred in by Government :—

"It appears from the very few details given in the Collector's report that the village of P. in the Ratnágiri District is a dhárekari village, and that one of the gaonkars is responsible to Government for the collection of revenue, one of their member being appointed by rotation to be the kabuláyatdár for each year.

"2. The petitioner's turn is stated to have come in the year 1877-78, but the kabuláyatdár of the previous years having refused his consent, the Revenue authorities would not accept the petitioner's kabuláyat. There is a fixed cash allowance payable from the Government treasury as remuneration of the kabuláyatdár for damages, that is, I suppose, for loss of the payment of the allowance during the year he would have served as kabuláyatdár but for the withholding of consent.

"3. The petitioner applies for a certificate under Section 6 of the Pensions Act. The Collector is of opinion that under the authority of the ruling of the High Court, which he quotes from Indian Law Reports, 1 Bombay, page 75, a certificate is necessary; and under Rule 2 of the Rules* under the Pensions Act he refers the matter for the orders of Government recommending the grant of a certificate.

*Printed at pp. 295—308 of the Compilation of General Rules.

"4. Whether the nature of the petitioner's intended suit has been properly described or not, I am unable to say; but if it is intended to bring a suit for damages, no certificate is required. The ruling relied on by the Collector does not seem applicable, as the suit in that instance was to have a right declared to a certain share of a cash allowance and for payment of arrears. In the case under report, there is no dispute that the petitioner is a co-sharer and entitled to the payment when his turn of service comes. He appears to state that the late kabuláyatdár misled the Revenue authorities, and that he thereby lost his turn of management and the emoluments for the year. A suit for damages, that is, to recover from the defendant this loss, is not a suit relating to the grant of money.

"5. Even if petitioner intended to sue to have his right to be declared kabuláyatdár in his turn, his suit would not be prohibited by the Pensions Act, and a certificate under Section 6 thereof would not be necessary (*see* the subsequent ruling at page 531 of the same volume in which the former case is distinguished).

"6. Again, if the Khoti Settlement Act is applicable to the present case, that Act declares that it shall be lawful for any of the co-sharers at any time to sue for a decree *inter se* to declare which of them is entitled to the management.

"7. Lastly, it is not at all clear what Rule No. 2 of the Rules made under the Pensions Act has to do with the present case, and why, if it had been necessary to grant a certificate under Section 6 of the Act, a reference should be made under that rule for the orders of Government."

(G. R. No. 1842, dated 18th March 1882.)

6. Section 10 of the Khoti Settlement Act (Bombay Act I of 1880) provides that when any 'privileged occupant's' land is resigned or forfeited or lapses, it shall be at the disposal of the Khot. 'Privileged occupant' is defined in Section 3, clause (5), of the Act to mean a dhárekari or a quasi-dhárekari or an occupancy tenant. It is, therefore, clearly within the contemplation of the Legislature that there may be land-holders of any of these denominations in villages to which the Act applies. There may be in any such village land-holders of two or of all three of these denominations, or the land-holders may be all dhárekaris or all quasi-dhárekaris or all occupancy tenants. The provisions of the Act, inclusive of Section 10, apply equally whatever denomination the land-holders belong to. This seems to be quite reasonable, for if it be admitted that Section 10 is properly applicable to the holding of a dhárekari whose land is situated in a village in which the bulk of the land is khoti land, there is no difference, in principle, between his case and that of a neighbouring dhárekari who happens to hold in a village in which all the land-holders are dhárekaris. This result of the Act is in accordance both with former practice and with the intention of Government when framing the Act.

It has been questioned whether the Act applies at all to pure dhárekari villages, inasmuch as it extends only to villages 'held by Khots.' If, however, there is a Khot of any such village, it is he to whom the dhárekaris have to pay rent (Section 33 of the Act), and the Khot pays his land revenue or jama in the lump to Government (Section 4 of the Act). Looking to these provisions and to the fact that if any dhárekari's holding is resigned or forfeited or lapses it is at the disposal of the Khot, it is quite correct to say that the village is held by the Khot, because, by Section 3, clause (10), of the Land Revenue Code (which Section 3, clause 12, of the Khoti Settlement Act makes applicable), 'to hold land' means 'to be legally invested with a right to the possession and enjoyment or disposal of such land, either immediately or at the termination of tenancies legally subsisting

(L. R. No. 19, dated 5th January 1885: *vide* G. R. No. 658, dated 23rd idem.)

7. Every effort should be made to put a stop to the practice of the Khots depriving the tenants of their old receipt books in order to destroy the proof of their *maktas*. (G. R. No. 10088, dated 16th December 1885.)

8. The answer to the question whether a Khot, in a village where there is a Kulkarni, is bound to write up the credit side of the rayat's receipt book, is that the Khot is bound "to keep, or cause to be kept, such accounts as may from time to time be required by the Collector under the orders of Government" (Section 15, Bombay Act I of 1880).

Rule VI of the Rules* under Section 40 (*c*) of the Khoti Act provides "The Khot *shall* keep under Section 15 the following three accounts :—

(1) The Appraisement Ledger.

(2) The Ledger.

(3) The Rayat's Receipt Book."

* Printed at pp. 573—593 of the Compilation of General Rules.

The fact that Government employ an agent whom Government, if they chose, may legally † require to keep such accounts, does not entitle the Khot to insist on being relieved of the duties imposed on him by law. No doubt the Khot cannot be called on to perform the duties imposed by law on the Kulkarni *alone*, under paragraph 2 of Section 17 of the Land Revenue Code.

† Under paragraph 1 of Section 17, Bombay Land Revenue Code.

But it is entirely at the discretion of Government to require any accounts to be kept by the Khot, and he cannot complain or demand that Government should transfer those duties to one of their paid servants.

It is only for certain purposes that the position and duties of the Khot are analogous to those of a Pátel. That partial analogy cannot relieve him from duties imposed by law, which duties, in villages where no Kulkarni is employed, must necessarily be performed by the Khot. The Kulkarni is not the Khot's official subordinate. The Khot's connection with Government is contractual, and no power over Government employés or officials has ever been conferred on him. If Government confer such powers, or relieve him of his duties, that is an act of grace, and not a right which he could claim.

The decision whether the Khot should be required to keep (or at his own expense cause to be kept) the accounts in question, is entirely at the discretion of Government, and if Government consider it desirable from an administrative point of view, the Khot has no right to object.

(L. R. No. 174, dated 9th February 1889 ; *vide* G. R. No. 1567, dated 26th idem.)

9. If any person holding the office of Khot without a sanad in any village to which the Khoti Settlement Act does not extend or has not been extended, refuses to execute the customary yearly kabuláyat, the Collector of the District shall issue a notification calling upon all persons claiming a right to execute such kabuláyat to submit such claim in writing to the Collector within six months of the date of such notification.

Such notification shall state that if no such claim is so submitted within such period, the office of the khotship with all the rights, perquisites and remuneration attached thereto, will be permanently forfeited to Government, and that Government will not thereafter recognize the claim of any person to reinstatement therein.

A copy of every such notification shall be affixed in each of the following places, *viz.*, the office of the Collector of the district, the office of the Mámlatdár or Mahálkari of the táluka or mahál in which the village is situate, and the *chávdi* or some other public building of the village to which it relates.

The Collector may also cause such notification to be published in any other manner that he may deem fit.

If no claim to execute a kabuláyat is submitted within the period required by such notification, the forfeiture of the khotship shall be enforced.

(G. R. No. 3861, dated 27th May 1889.)

II.—SURVEY AND SETTLEMENT.

1. The following report of the Remembrancer of Legal Affairs was circulated to the Commissioner, S. D., and the Collector of Ratnágiri in connection with a suggestion that the High Court be induced to issue a circular instructing the Subordinate Judges in the Ratnágiri District not to proclaim khoti lands for sale unless it is proved to the satisfaction of the Court that the judgment-debtor has been declared by the Settlement Officer to have a transferable interest in the property :—

"I do not think the High Court would deem that it has the power to issue such an order to the Subordinate Judge as the Collector recommends. I do not myself think that it would be competent to that Court to do so.

"2. Moreover, the determination of the Survey Officer, and the entry he makes in the Settlement Record as to whether an occupancy-tenant's interest is transferable otherwise than by inheritance or not, is subject to reversal or modification by the Civil Courts (Bombay Act I of 1880, Sections 21 and 22), and it might be that the very proceedings, in which the Collector suggests that the Subordinate Judges should not take action unless the Survey Officer has declared the tenant's right to be transferable, would be the cause of the Courts being set in motion to determine authoritatively whether that declaration is right or not.

"3. Remedies intended to protect persons ignorant of the law and of their own rights under it from being victimized may be provided in some cases by the Legislature, but Civil Courts are, I think, not justified in taking any measures of their own motion which will favour or protect one class of suitors more than other. It is doubtful, therefore, whether the High Court would consent to issue any such order as that suggested, even if it deemed that it had the power to do so.

"4. The most suitable means of preventing the hardships to which the Collector has called attention would appear to be (1) that the Collector should take measures for making the legal effect of the non-transferability of tenants' rights more generally known and (2) that a test-case in each táluka or group of villages be contested in the Courts whenever opportunity occurs, legal and pecuniary assistance being given by Government, if necessary, to the tenant whose interest is involved.

"5. With reference to what the Collector describes as the disadvantage of a declaration under the Khoti Settlement Act that a tenant's right is not transferable, I think he overlooks the fact that the Survey Officer does not by such declaration create a new right or liability. He merely ascertains and records an existing right or liability, giving certainty (subject to the power of the Civil Courts to reverse or modify his

declaration) to that which before could not be definitely ascertained otherwise than by litigation. The primary object of the provision was to settle the relative rights of the litigation. The primary object of the provision was to settle the relative rights of the occupancy-tenant and the Khot, and in the imaginary case which the Collector suggests, the result would, in my opinion, be what the Legislature intended, *viz.*, that the occupancy-tenant would be prevented from transferring his land, which, when the occupancy-tenant's family became extinct, would revert to the Khot. To the best of my knowledge, the provision in question was not enacted with any idea of saving the tenant's land from his creditors, but it, no doubt, has this advantageous effect also, if the tenants can only be taught the value of it."

(L. R. No. 301, dated 28th March 1887; *vide* G. R. No. 2764, dated 4th May 1887.)

2. The decisions of the Khoti Settlement Officer under Section 21 of Bombay Act I of 1880 are not appealable to any higher executive authority. (G. R. No. 6292, dated 16th September 1887.)

III.—ADMINISTRATION OF SURVEY SETTLEMENTS MADE UNDER THE KHOTI SETTLEMENT ACT, 1880.

1. According to paragraph 1 of Section 23 of the Khoti Settlement Act, Section 36 of that Act does not apply to a khoti village until such time as a survey settlement or a revised survey settlement is first introduced therein after the passing of the Act.

Under paragraph 2 of Section 23 the rights and responsibilities of all persons in a khoti village in respect of the payment of Local Fund Cess until such time, are to continue to be such as they would be if Section 36 had not been enacted.

There is no doubt that lands held by Khots are liable under Section 6 of Bombay Act III of 1869 to the Local Fund cess. There is little doubt either that they, as well as Inámdárs, are entitled under the latter part of Section 8 of the Act to recover this cess from their tenants. But they, as well as Inámdars, can only recover from their tenants what they themselves actually pay to Government, and each individual tenant is only liable for the proportion which the assessment or rental of his land bears to the total assessment or rental of the entire village. Neither a Khot nor an Inámdár is at liberty to make use of the provisions of the Act as a means of profit to himself by levying from his tenants in the name of Local Fund cess a larger amount than he himself has to pay to Government on that account. This was so held by the Bombay High Court in Special Appeal No. 303 of 1873 (High Court's Printed Judgments for 1874, page 29). The Court said:—

"The plaintiff's claim to recover as local cess one anna on every rupee of his own rent is clearly inadmissible. He has not given evidence * * * * to prove what would be the proper proportional amount of the Government assessment on the field in dispute, as deduced from the total assessment of the village; and, therefore, (assuming that the cess is recoverable from the defendant) there are no materials for determining the amount."

Where every holding in a village has been surveyed and assessed, there is no difficulty in determining what is the amount of each individual tenant's liability; but where this is not the case, the burden is on the superior holder to establish that the amount which he seeks to recover from any inferior holder is the proportion of the aggregate amount of cess payable for the village fairly due by that inferior holder. (L. R. No. 551, dated 29th April 1887; *vide* G. R. No. 4180, dated 7th July 1887.)

2. It will be seen from Sections 26 to 31 of the Khoti Settlement Act, I of 1880, that a managing Khot *can* only be appointed where the village is held by two or more co-sharers *jointly*. In that case *one* of their number *must* be nominated either (1) annually, or (2) in accordance with prearranged rotation, or (3) on the Collector's appointment, and such nominee is to receive the inferior holders' rents, to pay the Government dues and generally to perform all acts required by the Act to be performed by the Khot. Such nominee must under Section 29 be furnished with a certificate which is conclusive as to his right to manage for that year the village to which it relates. And such nominee *alone* is entitled to assistance in recovery of rents under the Land Revenue Code, Sections 87 and 89.

But when the Khots have divided, there can be no such thing as a managing Khot at all (Section 32).

In that case all the provisions of the Act apply to each Khot as if he were an independent holder of an entire khotki.

That is to say the share allotted to each Khot becomes on division a separate khotki, and each Khot is bound by all the duties, and entitled to all the rights and privileges which apply to a managing Khot in an undivided village. If the village is undivided, there *must* be a managing Khot. If the village is divided, there *cannot* be a managing Khot. This is clear also from a comparison of Sections 18 and 19. If a village be undivided, Section 18 requires the provisions as to the nomination of the managing Khot to be entered in the records. If partition has been effected, then the provisions as to a managing Khot apply not to the village but to each individual share. But if the village is divided, then it is the *duty* of the Collector (the words of Section 32 being imperative) to determine the amount of the jama payable in respect of each separate share, and the holders thus become severally liable (Section 32), instead of jointly and severally liable as when undivided under Section 26.

Under Section 15 of the Act certain duties have to be performed by the Khot. He must keep accounts and he must give written receipts. A receipt by any one else than the Khot would be obviously invalid.

But the Khot means in an undivided village the managing Khot, in a divided village each sharer.

Until, therefore, the shares are defined and until the sharers have been constituted independent holders of entire khotkis (Section 32), it is impossible for a tenant to obtain a valid receipt from any person who does not hold a certificate under Section 29.

If there be a managing Khot, he alone can grant a valid receipt, and I do not think he can delegate his right of collection, as he cannot transfer the correlative powers and duties (*vide Quebec and Richmond Railway Company* v. *Quin*, 12 Moore P. C., 232) as long as he holds the certificate. No one else can give a valid receipt and he has, therefore, no right to divest himself of that duty by transferring the collection to another person to whom, moreover, he cannot transfer his right to obtain official assistance.

If a tenant in such a village refused to pay a sharer other than the Kabuláyatdár Khot, he would be well within his rights. The sharer could not obtain official assistance, and as he could not grant a valid receipt and has divested himself of his rights under the Act by assenting to the nomination of a kabuláyatdár manager, he could not recover in the Civil Courts.

In Ratnágiri, such contentions very frequently occur in the Civil Courts. One faction of the co-parcenary assents to a complete partition, and specifies the allotment of tenants. The other faction denies any permanent system of partition and contends that a partition by tenants is impossible where tenancies are constantly changing in number and area. It appears that it was expressly to guard against such dispute that the provisions of Sections 26 to 32 were enacted. If the village is undivided, there can be no doubt the Kabuláyatdár Khot has the right to collect and no one else has, for no one else can grant a valid receipt. If the village is divided, then the only proper course is for the Collector to ascertain the shares, and for the system of nominating managing Khots to cease at once.

The responsibilities of each sharer and of each tenant are then ascertained, and there can be no further dispute.

(L. R. No. 1124, dated 11th October 1888; *vide* G. R. No. 7170, dated 27th idem.)

3. No holder can be allowed to collect "thul", or to obtain aid in so doing, unless he is

(*a*) a Kabuláyatdár Khot, or

(*b*) a separated Khot with defined responsibilities and duties, and as such bound to give a valid discharge to the servants, and capable of doing so.

Individual sharers cannot collect or obtain aid unless they are divided, and then their responsibilities must be defined under Section 32 of the Khoti Act.

If no such division has taken place, then the Kabuláyatdár Khot alone can collect the "thul,"

grant receipts and obtain assistance. (L. R. No. 1562, dated 14th December 1889; *vide* G. R. No. 657, dated 25th January 1890.)

IV.—ATTACHMENT OF KHOTI VILLAGES.

1. A Khot is liable to be assessed for khoti profits during the time that the khoti village is under attachment by Government—VII Bom. H. C. R., 41 A. C. J. (L. R. No. 464, dated 9th May 1876; *vide* G. R. No. 3111, dated 25th idem.)

2. In the case of khoti, khoti khichdi and dhára villages under attachment, the cost of management should be held to be the first charge on the collections and then the Government demand should be satisfied. If it can only be satisfied in parts, the amount of land revenue not paid should be held as balance unrealized in the revenue accounts. The income and expenditure of the attached villages should by rule be recorded in the Public Accounts under 'Personal Deposits.' The cost of management of the villages and the collections from them are not, in the first instance, Government receipts and payments, and cannot, therefore, be estimated for as such. (G. R. No. 7178, dated 26th September 1883.)

3. There are certain villages originally under gaonkari tenure which have been for long periods under direct Government management. These villages are described as being under "attachment," but the term "attachment" is probably used in a sense in which it is apparently understood in Ratnágiri merely to indicate the direct management of land which at some time or other had been under a middleman. As the villages are in no sense whatever the property or "holding" of the gaonkar and as the provisions of the Land Revenue Code, Sections 159-163, dealing with "attachment" for arrears of land revenue do not apply, it will be better that the word "attachment" should not be used in relation to such cases.

(G. R. No. 2260, dated 13th April 1888.)

4. The rule of limitation introduced by the Khoti Settlement Act (Section 39, clause *e*) was not intended to operate retrospectively, so as to receive rights already extinguished.

7 Mad. H. C. R., 283.
7 Mad. H. C. R., 288.
7 Mad. H. C. R., 293.
7 Mad. H. C. R., 298.
7 Mad. H. C. R., 392.
12 B. H., C. R., 237.
I. L. R., 3 C., 331.
I. L. R., 8 B., 99.
I. L. R., 1 M., 228.

New rules of limitation are never given such retrospective effect.

The operation of a new rule of limitation on a cause of action not already barred when it comes into force, is to stop the operation of the repealed law.

I. L. R., 1 B., 287.
I. L. R., 1 B., 295.
I. L. R., 1 C., 328.
I. L. R., 1 B., 305.

The Khoti Act operated only on causes of action not already barred. Claims which had already become barred under the law as it stood before, were unaffected by the new law.

Before Bombay I of 1880 came into force, khoti villages were not held on the same tenure, and were not all governed by the same principles of law.

Some were the *estates* of the Khots, secured to them by sanads, &c., with superadded conditions of service connected with the collection of the revenue.

These estates were not all in full proprietary right, but were yet distinguishable from a mere farm or office, as they were not held solely as remuneration for services to be performed.

Other khoti villages were held altogether without sanad by Khots who were mere farmers of the revenue, and whose rights were conditioned on the performance of service.

The khoti village in the case at 3, Bombay High Court Reports, 132, is an instance of this last mentioned class. And that case is a full authority for saying that on the failure of such non-sanadi Khot to fulfil the conditions on which he held his office, he was liable to be turned out of it, and would thereupon forfeit the rights which were merely remuneration for his services. He could not, as a matter of *right*, claim them again *at all*.

3 B. H. C. R., 132.

But it was different with regard to sanadi Khots. They were not mere servants or farmers. They had estates. The estates were burdened with service, but were not conditioned on the performance of service. Those estates, if they made default, were no doubt liable to attachment, but were not absolutely forfeited by such default. If, therefore, they were dispossessed, they had a right to claim them again, on payment of due compensation, provided they made their claim within the period allowed by law for the recovery of immoveable property.

At the time of the introduction of the Khoti Act, Limitation Act (XV of 1877) was operating on all claims not then already barred, and the twelve years' rule, therefore, applied to all sanadi Khots whose claims were not already barred. That is to say, sanadi Khots could have obtained possession on payment of dues, if they had sued within twelve years of the date when they were first dispossessed by Government.

But Revenue Officers had long treated sanadi and non-sanadi Khots as if they were on the same footing, and partly for convenience sake, partly from uncertainty as to the law, had allowed both classes reinstatement, if they applied within "a reasonable time:" *vide* G. R. No. 3939, of 5th October 1859.

The Khoti Act does away prospectively altogether in the places to which it extends, or to which it has been extended, with the distinction (which the Civil Courts always recognized) between sanadi Khots and non-sanadi Khots, and renders Khots of both classes

superior holders. And as superior holders, both non-sanadi and sanadi Khots whose rights were not already extinguished, became entitled, on the Act coming into force, to claim restoration under Section 162, Bombay Land Revenue Code, within twelve years of the 1st August after the Act came into force.

I. L. R., 8 B., 525.

That is to say, even non-sanadi Khots were treated as if they had an interest in the immoveable property itself, instead of only a conditional right to be remunerated out of it.

But in placing these two classes on exactly the same footing a difficulty arose.

An attachment by Government might either mean that Government no longer recognized the rights of the Khot as still subsisting, or that Government had placed the property under attachment, not denying the Khot's right to it, but merely holding it liable *as his property* to satisfy his debts.

In the former case the possession of Government would be adverse from the first. In the latter it would only become adverse when Government refused to restore the property on tender of the payment due.

When the Khoti Act rendered Section 162, Bombay Land Revenue Code, applicable to all Khots, as superior holders, every attachment, then pending, at once began to operate as dispossession, within twelve years of which the claim to restoration must be made.

In order to prevent that section operating to the prejudice of the sanadi Khot retrospectively on attachments which might have commenced on another understanding, Section 39 (*e*) of the Khoti Act treated all attachments then actually pending as if they had only just commenced, and gave twelve years from the date of the Act coming into force, within which restoration might be claimed.

But if there was no attachment actually pending, and dispossession had undoubtedly become complete before the Act came into force, then the rights of the dispossessed Khot were not revived or affected at all.

That is to say, a Khot, whose village at the time when the Act came into force, was entirely out of his possession, and not merely under attachment, could not within twelve years of the Act coming into force claim under Section 39 (*e*) to be restored on payment of the sums due by him.

If he was a non-sanadi Khot who had been dispossessed for non-performance of the duties of his office, he could not prior to Act I of 1880 claim, *as of right*, to be restored at all.

3 B. H. C. R., 132 I. L. R., 8 B., 525.

If he was a sanadi Khot who had been dispossessed, then he might have brought a suit (as in the case at 3 B. H. C. R., 132.) within twelve

years of his dispossession (not within twelve years of the Khoti Act coming into force) for a restoration of his *estate*, and if his tenure was not conditioned solely on the performance of service, it would probably be held that his restoration was not a mere matter of grace or to suit the convenience of Government, but a matter on payment of all dues he might claim as of right, if he made his claim within twelve years of dispossession. But his rights would not be extended by any thing in the Bombay Land Revenue Code or the Khoti Act.

It seems, therefore, that Section 162, Bombay Land Revenue Code, applied only to Khots whose villages were under attachment when the Khoti Act came into force, or which might thereafter come under attachment, but had no application to Khots whose dispossession had become *complete* before that date. Such last mentioned Khots only had such rights, as they might be able to prove against Government under the law, as it stood, before the Khoti Act, and in the case of non-sanadi and other Khots who were merely farmers of land revenue, restoration could not be claimed as of right *at all*, and in the case of others who laid claim under sanads or on other grounds to an *estate* in the lands, and alleged illegal dispossession, the Legislature apparently intended that they should assert any right of suit they might have, within twelve years of dispossession, and should not be admitted without contest to possession by the executive officers of Government.

A suit, if not brought within twelve years of dispossession, became time-barred.

The Legislature imposed no duty on Revenue or other executive officers to restore without suit those whom Government had already decided finally to dispossess.

If such a duty had been imposed, such officers would have had to decide whether the dispossessed Khots held solely on condition of service, or could claim a right to the *lands* under a sanad or any other title.

As far as Government are concerned, the dispossession is in itself a decision that in the opinion of Government no right to restoration existed.

Neither the Bombay Land Revenue Code nor the Khoti Act implies that any executive officers are bound or empowered to revise such a decision.

(G. R. No. 1621, dated 24th December 1889 ; *vide* G. R. No. 675, dated 25th January 1890.)

V—TREES AND MANAGEMENT OF FORESTS IN KHOTI VILLAGES.

1. There should be no interference on the part of Government with teak and blackwood or any other trees growing on dhára land in the Ratnágiri and Kolába Districts in which the conditions of Mr. Dunlop's Proclamation of 1824 have been in force.

Cases of shares of forest property in teak and blackwood enjoyed by dhárekaries under the provisions of a kabuláyat made either with the Forest Department or with the Survey Department under the Settlement lease, should be considered exceptions to the general rule, and treated according to the terms of such agreements.

These orders are not applicable to any part of the Northern Konkan, where the sootedar stands in the place of the dhárekari, except, however, with the important distinction that he has never enjoyed any property in the teak and blackwood growing in his holding.

(G. Rs. Nos. 1240, dated 28th March 1868, and 2095, dated 27th May 1868.)

2. Government are not prepared to abandon their right to all royalty trees in the Ratnágiri District growing beyond the limits of reserved or protected forests, but they are pleased to concede to occupants of khoti lands the right to all kinds of reserved trees planted by them or which they might hereafter plant in their khoti land, provided they assented to the following conditions :—

(1) that an officer of the Forest Department be permitted to count the number of trees planted and see if it correspond with the numbers given out as such, and

(2) that the occupants agree in writing that before cutting any they should inform the forest office, and should any be cut without intimation to that officer they will lose all right to the timber cut and it should be the property of Government.

(G. Rs. Nos. 3363, dated 1st May 1883, and 3846, dated 5th June 1891.)

3. The right to the after growth of trees in khoti nisbat lands should be conceded to the Khots in the Kolába District, on the express condition that the concession is in no way intended to operate as admitting the status of a Khot in Kolába to be that of an occupant. (G. R. No. 836, dated 30th January 1893.)

4. It has been ruled* by the High Court that unless a Khot is proprietor of his land, Dunlop's Proclamation does not confer on, or confirm to him, any rights in timber trees. (G. R. No. 4285, dated 15th June 1886.)

5. In regard to villages or portions of villages in the Ratnágiri District in which the original survey settlement has been completed since the passing of Bombay Act V of 1879, Government can before the completion of the survey settlement of the district reserve by notification its rights to such trees in unalienated lands as it is desired to reserve. Such notification if in the form given in paragraph 4 of Appendix J of the Rules under the Land Revenue Code will not purport to affect the holders

* Bombay High Court Printed Judgments for 1875, page 327.

of dhára lands who under Dunlop's Proclamation are the proprietors of trees growing thereon. (L. R. No. 767, dated 7th June 1889; *vide* G. R. No. 4720, dated 21st July 1887.)

Note.—By Government Resolution No. 4720, dated 21st July 1887, the Collector of Ratnágiri was authorized to issue, in respect of all the surveyed tálukas before the completion of the survey settlement of the district, notifications reserving teak and blackwood trees in *all* lands, and ain and nána in varkas lands.

6. The management of forests in khoti villages should in all cases be vested in the Khot. In cases, therefore, where a minor may succeed to the khotship of a village, his guardian or the member of the family of the deceased appointed to the general management of the latter's estate should also be entrusted with the management of the forest belonging to his property. (G. R. No. 4475, dated 30th October 1865.)

7. The engagements of Dr. Gibson with the Khots, by which the latter are allowed one-third of the proceeds of all teak and blackwood cuttings and sales, should be faithfully and strictly adhered to. (G. R. No. 2290, dated 30th May 1865.)

Permission to cut teak and blackwood should not be given to the Khots, but on timber of this description being cut by the Forest Department they should be allowed one-third of the net proceeds. No restriction is to be placed on any other kind of wood growing in their lands or villages, unless reserved by Government under special agreement. (G.R. No. 2588, dated 20th June 1865.) Government Resolution No. 2588, dated 20th June 1865, is not to be interpreted as conferring any new privilege to the Khots of Ratnágiri, but as merely authorizing the continuance of past practice in that Collectorate.

In the case of the Khots in the settled districts in Thána who hold their forests under special agreement, they should be allowed one-third of the proceeds of all firewood cut in their villages, if it was intended at the time of the agreement that this right was to be conceded to them.

(G. R. No. 2936, dated 10th July 1865.)

The rule in Government Resolution No. 2588, dated 20th June 1865, is applicable to all Khots, whether resident or non-resident, who have entered into agreements to preserve the forests of their villages and not confined to the resident class only. Any Khot convicted of misconduct in regard to the conservancy or the disposal of the forest property of his village is barred the enjoyment of the share of profits conceded by the order in question under the conditions of the agreement made in the Settlement lease. (G. R. No. 114, dated 10th January 1866.)

8. The Forest authorities, before the introduction of the survey, entered into agreements with individual Khots for the preservation of certain valuable description of trees. Subsequently the survey officers were authorized by Government to make these agreements generally with all Khots and

allow them a share in all forest produce. Nor was the agreement to be restricted to resident Khots. But whether resident or non-resident, the Khot was to be held answerable for the protection of the forests on pain of losing his share in the proceeds. It follows that the agreements entered into by the Survey Department merely confirmed and amplified the concessions previously made. If a Khot has parted with his rights to a third party, the obligation to conserve the forests must be fulfilled by the purchaser, or else the rigths will be withheld. (G. R. No. 2531, dated 28th May 1870.)

9. If the Khots in the Kolába District who have accepted survey leases stipulating that they should on condition of preserving the forests get one-third of the produce fail to act up to the conditions they must lose the benefit of the agreement. It is no doubt difficult to determine to what extent they can reasonably be expected to preserve the forests, but if, as appears to be often the case, they take no steps whatever to protect the forests, but on the contrary assist in destroying them, Government is not bound to pay for a service which is not rendered. Payment should, therefore, be withheld in case of any proved neglect on the part of a Khot to carry out the condition on which the payment was promised, the claim of the Khot to payment of his share of forest produce being decided by the Collector. It will be for the Forest Department to prove in any case the negligence on the part of the Khot. (G. M. No. 6388, dated 28th August 1883, and G. R. No. 110, dated 7th January 1885.)

10. The managing Khot is the representative for the time being of the general body of Khots and their agent for all acts in which the Government are concerned. He is therefore the person to whom the payments under Government Resolution No. 2936, dated 10th July 1865, on account of one-third of the proceeds of the forest fellings in their village should be made, and he will be responsible for distributing the money to the co-sharers according to their severalrights. But the person who was the managing Khot in the year in which the money became due is not the one who should receive payment. His year being past and over, he is *functus officio*. The person who is actually the managing Khot at the time the payment is made is the only person with whom Government are justified in having any dealings, and the payments should be made to him only. The fact should, however, be clearly made known that the payments are made to the managing Khot for the time being as the agent and representative before Government of the co-parcenary, and the payment should be only made to him on his passing a receipt to the effect that he receives the money for and on behalf of the various co-sharers respectively entitled to a share thereof. (L. R. No. 534, dated 14th April 1884; *vide* G. R. No. 3377, dated 25th idem.)

11. When wood is cut in one village in order to supply a free grant to rayats of another village, the

Khot of the former village is incontestably entitled to one-third of the net value of the cutting.

When the cutting is in the same village in which the grant is to be made, it might possibly be established that the Government has a right to make such free grants without reference to the Khot, and that a felling made for such a purpose is not a felling within the meaning of the Khot's agreement. But to avoid litigation the Khot's assent should always in such cases be previously obtained to the cutting being made without entitling him to a share of the value of the wood cut.

(L. R. No. 815, dated 14th June 1890; *vide* G. R. No. 4651, dated 4th July 1890.)

VI.—MISCELLANEOUS.

1. *Survey Settlement.*—On the introduction of a new survey settlement into any village under Section 38 of the Khoti Settlement Act, 1880, precisely the same procedure must be followed as on the introduction of a survey settlement, whether original or revised, into any other khoti village. (L. R. No. 1244, dated 2nd October 1880; *vide* G. R. No. 5379, dated 12th idem.)

2. *Conversion of Khoti nisbat into Dhára land.*—The conversion of khoti nisbat into dhára land should in no circumstances be permitted. (G. R. No. 1117, dated 11th February 1886.)